

Natural OUTLOOK

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AGENDA FOR TEXAS

TNRCC'S LEGISLATIVE PROPOSALS REFLECT CONSTRUCTIVE PARTNERSHIP WITH TEXAS LAWMAKERS

Since its creation, the TNRCC has built a strong relationship with the legislature that reflects the agency's growing emphasis on service and collaboration. Recently, the TNRCC's commitment to a partnership with the legislature has proved especially productive. By late September of 1996, all 34 bills passed in the 74th Session that required action by the agency had been implemented.

This solid working relationship comes into play once again in early 1997 as the TNRCC presents its package of legislative proposals to the 75th Session of the Texas Legislature.

"The agency and the legislature work closely together on a common agenda to protect Texas' natural resources and the health and safety of communities," said TNRCC Chairman Barry McBee. "Our approach is to be responsive to the legislators' interests and inquiries and to be open about what we're doing so the lawmakers will give our programs and proposals full consideration."

The TNRCC's 1997 legislative package has these goals:

- Consolidating and organizing legal requirements for water, air, and waste programs, including laws relating to public notice requirements and enforcement.
- Seeking consolidation or elimination of the agency's 20 statutorily required reports.
- Decentralizing aspects of the permit approval process, giving the TNRCC's regional offices greater authority regarding certain permitting actions.

- Streamlining resources so funds are used where they provide the greatest protection for human health and the environment.
- Streamlining the state Superfund program.

One of the TNRCC's priority objectives this session is to secure changes for the state

Superfund program, reflecting the recommendations made by stakeholder groups that have met over the last two years. The groups have made recommendations about process changes to streamline and improve overall efficiency. They were unable, however, to reach consensus on a mechanism to provide additional funding for the program.

Relying primarily on federal funds, the

federal Superfund program has investigated and cleaned up many of Texas' highest risk sites. Currently, however, available state revenues are being used to investigate and clean up other high risk sites that do not qualify for the federal Superfund program.

The TNRCC also recommends that the state Superfund process be revised to promote third-party involvement in site cleanup. To this end, the agency requests that its Voluntary Cleanup Program be offered as a viable alternative to the listing of a site on the state Superfund Registry. The program will encourage cleanup with the advantages of private investment, faster turnaround, and fewer procedural requirements.

In an effort to operate more efficiently, the agency is proposing that the legislature revise

continued on page 7

Q & A

**State Senator
Buster Brown
page 3**



**On stakeout,
lead investigators
for the TNRCC
and EPA oversee
a major enforce-
ment action that
shut down the
largest, most
lucrative illegal
landfill in
state history.
page 4**





Natural Outlook is published quarterly by the Office of Agency Communications in the Texas Natural Resource Conservation Commission.

TNRCC Commissioners

Barry R. McBee, *Chairman*
R.B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*

Executive Director
Dan Pearson

**Director
Agency Communications**
Andy Saenz

Natural Outlook Staff

Publishing Manager
Renee Carlson

Editor
Carlos Farquhar Greth

Writer
Suzanne Bass

Art Director
Bill Crimm

Photographer
Wayne Baker

Please visit our World Wide Web site:
<http://www.tnrcc.state.tx.us>

Articles in **Natural Outlook** are not copyrighted and may be reproduced. Please credit the Texas Natural Resource Conservation Commission for material used and send a copy of the reprint to the editor. Send comments or suggestions to Natural Outlook Editor, TNRCC, MC118, P.O. Box 13087, Austin, TX 78711-3087; Phone (512)239-0154; E-mail address cgreth@tnrcc.state.tx.us; or Fax (512)239-5010.

The Texas Natural Resource Conservation Commission is an equal opportunity employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation, or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TNRCC at (512)239-0010; Fax (512)239-0055; or 1-800-RELAY-TX (TDD); or by writing P.O. Box 13087, Austin, TX 78711-3087.

♻️ printed on recycled paper using soy-based ink

ORGANIZATIONS CHAMPION STATES' INTERESTS BEHIND THE SCENES IN NATION'S CAPITAL

Governors, state elected officials, and regulatory agencies like the TNRCC are the most visible champions for the views and welfare of Texas and other states in the development of federal environmental laws. Their positions are reinforced, however, by a group of lesser known but influential organizations that work behind the scenes to assure that the will of the states has an impact on legislation regarding basic issues such as Superfund cleanup, air quality, and drinking water.

Many legislators, for example, give credit for last year's passage of the Safe Drinking Water Act bill to a coalition of states' groups—including the National Governors Association, the Association of State Drinking Water Administrators, and the National Council of State Legislatures, among others—that presented a unified states' position on a number of the bill's provisions.

In the 105th Congress, reform of the Superfund law will be a major issue because the tax that pays for cleaning up abandoned Superfund sites has expired, and a cleanup fund surplus is fast being spent. Texas, with state cleanup efforts predating Superfund, is a key player in the debate, both on its own and as a member of the Association of State and Territorial Solid Waste Management Officials (ASTWMO).

From Texas' perspective, the key issue will be the states' role in the proposed new federal Superfund program, which most agree will delegate greater responsibility to the states for administering the law. Texas faces several scenarios: administering the federal program in lieu of the EPA; cleaning up Superfund sites according to Texas law; or proceeding according to current federal law. The success of any bill, however, will hinge on the cooperation of the states. ASTWMO staff have helped inform Congress of the viewpoints of a majority of states on Superfund issues, using issue papers, bill language developed by the states, and testimony from state officials, including several from Texas.

Another influential states' advocacy organization, STAPPA-ALAPCO (State and Territorial Air Pollution Program Administrators-Association of Local Air Pollution Control Officials), has presented the states' views to the EPA and Congress on Clean Air Act implementation. Texas officials have worked closely with STAPPA-ALAPCO on issues such as the need for funding to support a new particulate matter monitoring program being proposed by EPA. Yet Texas differs from STAPPA-ALAPCO on many issues and has taken an independent role regarding matters such as the Title V permits program.

The state organizations also work with federal agencies, especially the EPA, to achieve specific goals on behalf of the states. The Environmental Council of the States (ECOS), comprised of state environmental commissioners, including TNRCC Chairman Barry McBee, Commissioner Ralph Marquez, and Commissioner John Baker, has worked closely with both the EPA and Congress to implement improvements to the oversight and grant funding mechanisms for environmental programs.

State organizations provide two key resources to federal agencies and Congress: technical information and the viewpoints of the states when federal issues are being considered. While these organizations do not claim to speak for all states, they help ensure that leaders in Washington will make decisions based on accurate, current information from the states.

SENATOR BUSTER BROWN: ENVIRONMENTAL LEADERSHIP

State Senator J. E. "Buster" Brown of Lake Jackson serves as the new chairman of the Senate Natural Resources Committee. In the Texas House of Representatives, these duties are handled by Rep. David Counts (Knox City, Dist. 70), chair of the Natural Resources Committee, and Rep. Warren Chisum (Pampa, Dist. 88), chair of the Environmental Regulation Committee.

Brown represents District 17, which encompasses parts of Harris, Fort Bend, and Brazoria counties, and serves as vice chairman of the Subcommittee on Water. He is also a member of the TNRCC's Waste Reduction Advisory Committee.

Q What will be the major issue facing the Natural Resources Committee in the upcoming legislative session?

A Following last summer's drought, the supply and quality of water will be key issues because of their potential impact on the expanding population and economy of the state. It has been said that in Texas whiskey is made for drinking, and water is made for fighting. As we look down the road at projected population growth, we can see that the competition for water will increase.

We need to put plans in place to cope with drought. We have to learn to save water during times of plenty for use during times of scarcity. That will take some serious planning. We're going to have to consider options such as aquifer storage, as well as more controversial issues such as interbasin transfer of water, dams, and other major water projects.

Q How do you believe the TNRCC is viewed by the public and the regulated community?

A In the past, the public regarded the agency that

regulated the environment as something far away and inaccessible. I've been in this business 16 years, and I've seen a marked and positive change in public perception of environmental protection. When the citizens have confidence that the agency is looking out for their interests, they are more willing to work together to find solutions.

Based on what I hear from the regulated community, I get a sense that the "us versus them" attitude is dissipating. There will always be a natural difference of perspective, but I am seeing the TNRCC and industry working together as I haven't seen before.

Q What roles do pollution prevention, waste reduction, and recycling play in the TNRCC's efforts to fulfill its mission?

A Obviously, the less waste that is created, the less there is to clean up. Widespread participation is the key. If all individuals and companies would do their part to cut waste and recycle, the possibility of one segment of the community having to carry an unfair share of the burden would be reduced.

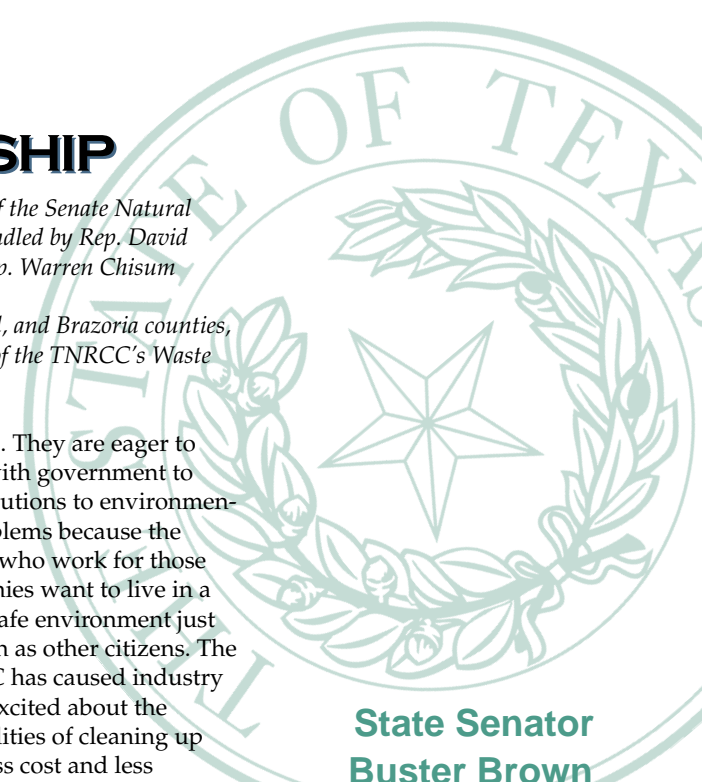
Most corporations want to be known as good corporate

citizens. They are eager to work with government to find solutions to environmental problems because the people who work for those companies want to live in a clean, safe environment just as much as other citizens. The TNRCC has caused industry to get excited about the possibilities of cleaning up with less cost and less adverse publicity. Texas industry has demonstrated great initiative in finding new solutions because they have a cooperative agency to work with.

Q What are the roles of voluntary pollution prevention programs such as Clean Industries 2000 and education programs such as Texas Recycles Day in implementing the state's public policies on waste reduction and recycling?

A These programs inform and remind people of their responsibilities in protecting and cleaning up our environment. Many citizens need to change their lifestyles and give up old habits. When I was a boy, fishermen on the state's lakes used to toss their beverage containers over the side of the boat. Now they're more likely to take a bag

continued on page 6



**State Senator
Buster Brown
has led a number
of environmental
initiatives in
Texas, including
authoring the bill
that created
the Voluntary
Cleanup Program
and establishing
the Texas
Superfund to
clean up
abandoned
waste sites.**

A MOUNTAIN OF WASTE

TNRCC and Federal, State, and Local Coalition Close Illegal Landfill of Monumental Proportions



Flanked by the EPA's Jane Saginaw, TNRCC Chairman Barry McBee assures reporters: "In DeSoto, as elsewhere, we strive to ensure that businesses comply with the law."

"We have a solemn responsibility to protect the people and resources of this state, and we will fulfill that responsibility, as we are doing here, with every tool at our disposal."

**TNRCC Chairman
Barry McBee**

The two men in charge of the stakeout, Dale Burnett of the TNRCC's Special Investigations Unit and Thomas Kohl of the EPA's Criminal Investigation Division, directed operations with cellular phones from an unmarked van.

Their mood hovered between anxiety and grim satisfaction. Months of painstaking investigation and surveillance at the site in the South Dallas neighborhood of DeSoto were about to pay off.

At 11:15 a.m., the long-awaited words came over the phone.

"We're going in."

The team of federal, state, and local government and law enforcement personnel collaborating on the case that day shut down one of the largest, most lucrative illegal landfills in Texas history. Over several years, the owner of the property allowed thousands of companies and individuals to dump solid waste at the site. More than half of the 80-acre property, bordered by residential neighborhoods and the Trinity River, was covered with a mountain of waste 30 feet high.

The owner was operating without a permit from the TNRCC for a solid-waste landfill and without a permit from the EPA for stormwater discharge. The owner disregarded numerous citations from the city of Dallas and a temporary injunction served by the Office of the Attorney General. He also



The illegal landfill in south Dallas contains an estimated 2 million cubic yards of solid waste, including everything from a derelict mobile home to medical refuse.

ignored an administrative order from the EPA requiring him to cease operations.

Legal consequences did not dissuade the violator because he was making so much money. In a television interview last year, the owner boasted that he made up to \$20,000 a day.

Following a two-month investigation, the TNRCC—working with a multi-agency,

Texas Parks and Wildlife, and Dallas Police—closed the operation on Sept. 10. The outcomes of federal and state criminal and civil charges in the case are pending.

On Sept. 14, at a press conference at the EPA Region 6 Office in Dallas, TNRCC Chairman Barry McBee expressed the agency's nonsense position.

"You illegal landfill operators out there are on notice," he said. "We have a solemn responsibility to protect the people and resources of this state, and we will fulfill that responsibility, as we are doing here, with every tool at our disposal."

The TNRCC is also pursuing other violators involved with the case. "A lot of people took a short-

cut—at the expense of our state's laws and the environment," McBee said.

While the agency makes compliance easier for business and industry by streamlining procedures, applying flexibility in the regulatory process, and establishing participatory efforts such as the Voluntary Cleanup Program, McBee made it clear that the TNRCC is committed to swift, sure enforcement when the law is flouted.

EPA Region 6 Administrator Jane Saginaw added, "Every level of government is working on this issue. Hand in hand we have been working to ensure the safety of our community, especially children, and the overall protection of the environment." Dallas Mayor Ron Kirk expressed his city's concern about the case and commitment to preventing future environmental crimes. "It is the responsibility of every citizen to report any and all infractions against our environment to the appropriate authorities," he said. "We all have a responsibility to provide a clean, safe environment where our children can flourish."

The magnitude of the violation in DeSoto is rare, according to Joe Vogel, deputy director of the TNRCC's Office of Compliance and Enforcement.

"The majority of businesses want to do what's right," Vogel said. "With the TNRCC's finite resources, we count on a high level of voluntary compliance, which the legislature has directed us to encourage among Texas companies."

In 1996, enforcement was a major focus for the TNRCC,

which reduced enforcement backlogs and imposed a record number of penalties.

The TNRCC's enforcement efforts are in line with a national trend in environmental regulation, according to Tom Kennedy, executive director of the Association of State and Territorial Solid Waste Management Officials in Washington, D.C.

"There is general agreement that despite efforts to look for innovative methods to encourage compliance, the states need to maintain a strong enforcement system," Kennedy said. Increasingly, he added, enforcement "hinges on an evaluation of the seriousness of the risk to human health and the environment. As state and national budgets tighten up, risk assessment and prioritization have become an integral part of enforcement." ★

TNRCC LEVIES RECORD AMOUNT OF PENALTIES

The TNRCC imposed more than \$11 million in fines and Supplemental Environmental Projects against approximately 700 environmental violators in fiscal year 1996. These figures, which are double those of the previous year, far exceed the highest annual total ever achieved by the agency.

The TNRCC issued 666 administrative orders levying fines of \$6.8 million. An additional \$4.2 million in Supplemental Environmental Projects (SEPs) were also established. One of the most promising options in the TNRCC's enforcement arsenal, the SEP allows funds that would otherwise have been paid as a penalty to be used to help remedy environmental problems in a community or area where the violations have occurred. The agency has increased the use of SEPs, approving 11 in fiscal year 1996, compared to five in 1995 and six in 1994.

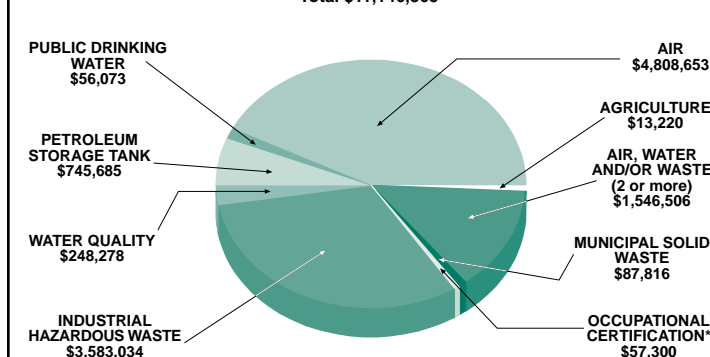
"These figures reinforce one of the guiding principles of this commission: to ensure strict, sure,

and just enforcement," said TNRCC Commissioner John Baker. "We want the public to know that those who violate environmental laws and regulations will be held accountable."

Additionally, the agency has dramatically cut its backlog of enforcement cases. In December 1994, 528 cases out of a total caseload of 1,169, or 45 percent, were backlogged. By September 1996, the number of backlogged cases agency-wide was down to

97 out of a caseload of 1,005, or less than 10 percent.

FY 1996 Penalty and SEP Amounts in Final Orders
Total \$11,146,565



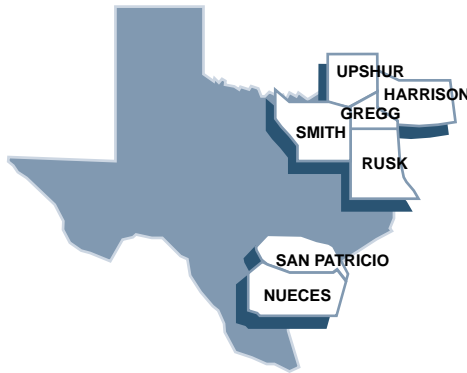
*People with licenses and registrations who have violated rules or people who are operating without a license or certificate.

The amounts levied in fines and Supplemental Environmental Projects reached record levels in a broad spectrum of TNRCC program areas in FY1996. The average fine for state environmental violations was \$16,737, up from an average of \$7,316 in FY1995.

FAR SURE

Flexible Attainment Regions Ensure Air Quality

FLEXIBLE ATTAINMENT REGIONS



The enlarged areas on the map identify the two clusters of counties that have been designated by the TNRCC and the EPA as Flexible Attainment Regions in Texas.

Prospering communities dread the nonattainment designation for air quality based on the EPA's guidelines—and for good reason. As people in the Houston and Dallas-Fort Worth areas can attest, nonattainment status can produce serious consequences for a growing economy.

Saadia Mai, resource conservation manager for the North Central Texas Council of Governments in Arlington, believes that the pollution offset requirement mandated by the designation translates into a cap on economic development.

"The offset means that we can't bring in a new industry that produces emissions unless we can find or create a reduction somewhere else in the region," Mai said.

The situation is not unique to Arlington, Mai explained. "One of the first questions consultants and CEOs from other parts of the country ask when they are considering expanding or moving into a new area is about air quality status. Nonattainment is a definite disincentive for growth."

It is no wonder that two areas in Texas, when faced with the prospect of nonattainment, eagerly pursued status as Flexible Attainment Regions (FARs). The FAR approach enhances the ability of regions to maintain compliance with the national ozone standard through voluntary measures. FARs empower local citizens and officials, working collaboratively with state and federal agencies, to design customized, commonsense strategies that reflect the economic needs and the industrial and ecological characteristics of their specific regions.

"I think this will prove to be the most effective way to improve air quality, not only in this region but across our state and throughout the country," said TNRCC Chairman Barry McBee.

The FAR agreements, which specify that the areas will implement voluntary and mandatory control measures, have already had a positive impact.

■ In August 1996, the TNRCC and EPA adopted a Memorandum of Agreement (MOA) designating the Corpus Christi area as a FAR. The plan was patterned after Tulsa, Oklahoma's MOA. It is the second such plan in the nation and the first in Texas.

SEN. BROWN ON THE ENVIRONMENT

(CONTINUED FROM PAGE 3)

along for the empties. It is crucial that we help people become aware that they can make a difference.

Q What is your view of the cost-benefit analysis approach as applied to environmental regulation?

A Cost-benefit analysis cannot put a value on human life. It can, however, be used to compare different risk-reduction options to help officials make sound decisions. Certainly, we have a responsibility to ensure that

requirements we place on the regulated community result in some benefit.

Q You have dealt with the difficult issues of waste tires, aquaculture, and petroleum storage tanks (PSTs). What concerns do you have about these topics at the advent of a new legislative session?

A The PST program is an example of an initiative that got off to a rocky start but emerged into something exemplary. I remind myself of

this when I think about the waste tire program. While the tire program has successfully cleaned up the illegal tire sites, it has not been nearly so successful in the recycling of processed tires. There are now about 1.7 billion pounds of tire shreds on the ground in Texas. The emphasis in the program must be changed to finding and promoting end uses for these shreds.

When you let the market drive the recycling programs, then the state subsidies and incentives can be set aside. Both the legislature and the

voters want this to be a market-driven program.

The major problems in the aquaculture industry have stemmed from an overlap of responsibilities or an absence of responsibility in our state agencies to regulate the companies in a proper fashion. We plan on delineating each agency's responsibility and promoting an effort of cooperation. In particular, we need to modify the agencies' authority so they can properly handle aquaculture discharge. ★

and Attainment Status

■ In September the EPA and TNRCC adopted another MOA for a five-county area in Northeast Texas that includes the city of Tyler.

"As the third FAR in the nation, the Northeast Texas agreement made us a leading state in this approach to air quality," said TNRCC Commissioner Ralph Marquez. "FARs emphasize the need for partnerships between federal, state, and local governments."

The FARs will allow both regions to continue working to find the best localized ozone prevention strategies, according to TNRCC Commissioner John Baker.

"Governments can provide guidance, but it's the local people who best know what will work well in their community," he said.

Tom Diggs, chief of Air Planning in the

EPA's Region 6 Office in Dallas, said that the federal agency is "very pleased" with the efforts and results on the local level in Texas. Diggs added that there has already been a measurable outcome in terms of reduced emissions. "We are seeing an approximate 10 percent reduction in volatile organic compounds in both regions," he said.

The EPA's proposed revisions in air quality standards, however, will probably require reevaluation of FAR plans, as well as reevaluation of the attainment status of the affected regions, according to Diggs. "The EPA remains committed to working in partnerships between federal, state, and local governments to implement programs in a commonsense, cost-effective manner," he said. ★

"FARs emphasize the need for partnerships between the state and federal governments and local communities."

TNRCC Commissioner
Ralph Marquez

TNRCC'S LEGISLATIVE PROPOSALS

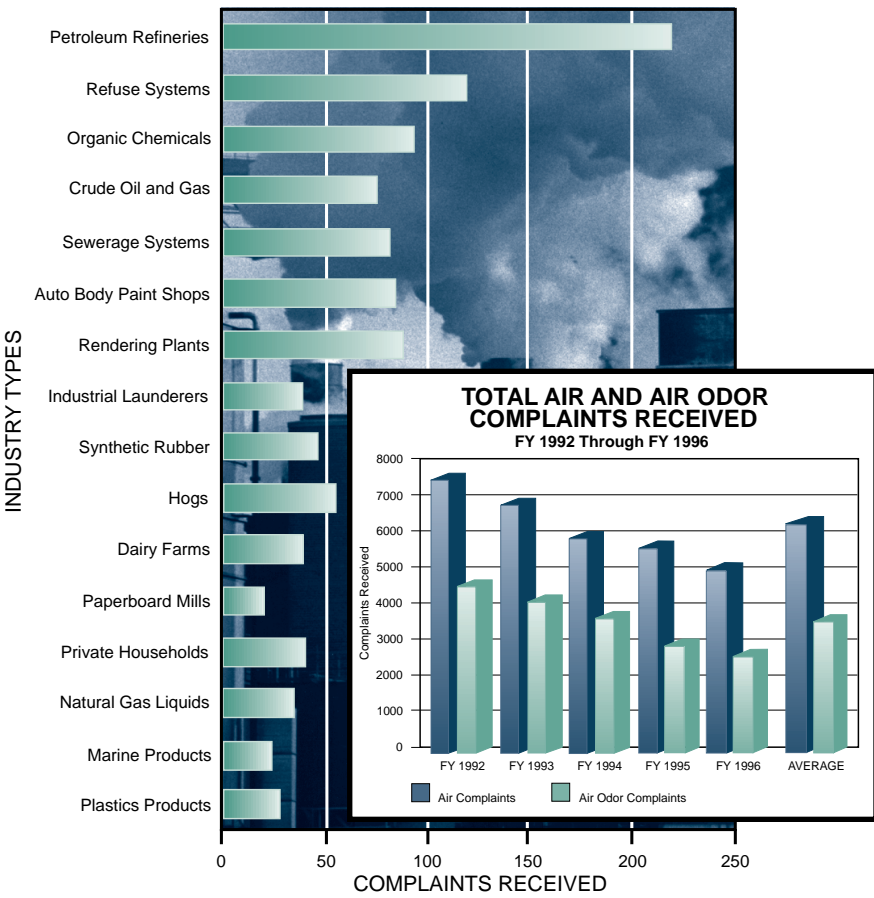
(CONTINUED FROM PAGE 1)

the definition of "air pollution" in the Texas Clean Air Act to be more specific about odor complaints, which have become a burden on agency resources. From 1992 to 1995, the agency responded to more than 14,000 odor complaints. The existing broad language describing nuisance orders requires a subjective judgment regarding how a community's "normal use or enjoyment" has been affected. The proposed change, however, would preserve the TNRCC's ability to respond to situations involving odors having a potential impact on human health or welfare.

Additionally, the TNRCC proposes establishing a consolidated permitting process to provide concurrent review for applicants who need several permits for a single site. The process would be voluntary for the applicant and would also provide an opportunity for the applicant to opt out of the process with the Executive Director's approval based on good cause (such as changes to existing rules). This proposal is consistent with agency-wide efforts to streamline permitting.

"The agency looks forward to a productive session working with the legislature," said TNRCC Commissioner John Baker. ★

FY 1992 - FY 1996 ODOR COMPLAINTS BY INDUSTRY



TNRCC regional staff spend an inordinate amount of time investigating odor complaints. The agency proposes that the Legislature modify the Texas Clean Air Act to specify statutory requirements and definitions regarding odor control.

ZERO, ZIP, NADA

NUSTAR UNIT IN DUPONT'S LA PORTE PLANT AIMS FOR ZERO POLLUTION THROUGH PREVENTION, REDUCTION, AND RECYCLING

Zero may not sound like much to most people, but for a group of DuPont employees in La Porte, it is a goal well worth pursuing.

In October 1996, staff at the unit that produces Nustar, a fungicide used in European vineyards, received DuPont's Safety, Health, and Environmental Excellence Award in recognition of their successful "Spirit of Zero" project, an effort to eliminate pollution related to the Nustar unit. The staff, who are committed to a corporate initiative that strives for zero wastes, emissions, and injuries, also received a check from DuPont to be contributed to a worthy local cause.

The Nustar unit achieved a 97 percent reduction in hazardous waste shipped, as well as a 99 percent reduction in toxic chemical releases and transfers reportable to the EPA's 33/50 Program. These accomplishments helped the unit meet its goals under the TNRCC's CLEAN INDUSTRIES 2000 voluntary waste reduction program.

The reductions in waste, releases, and transfers were achieved in part through a capital investment of \$3 million to upgrade the plant's recycling process, as well as chemical process efficiency improvements. Staff at the Nustar unit also employed DuPont's marketing resources for help in identifying prospective users of former waste products and contacting potential customers.

Dan Pearson, TNRCC executive director, helped DuPont celebrate the achievement at an event on Oct. 3, where Nustar's monetary award was presented to a partnership project between the Galveston Bay Foundation and the Galveston Bay Estuary Program.

Pearson said he was happy to help "recognize a group of Texas volunteers who are proving that working for a cleaner environment can also mean working for a more profitable business and a better community."

CLEAN INDUSTRIES 2000 is a voluntary pollution prevention partnership among 147 major industrial facilities,



The Nustar unit in the DuPont La Porte facility is one of many success stories in the TNRCC's CLEAN INDUSTRIES 2000 program.

communities, and the TNRCC. Program members follow a pollution prevention plan that will reduce Toxic Release Inventory (TRI) chemical releases and/or the generation of hazardous waste at their facilities by 50 percent or more from 1987 levels by the year 2000.

The Nustar unit is only one part of the sprawling 806-acre DuPont industrial complex in La Porte, but the entire site has made remarkable progress in pollution prevention and reduction. Since 1987, there have been overall reductions of 46 percent in TRI chemical releases and a reduction of 10 percent in hazardous waste.

In the private sector, the chief incentive for participation is improvement of the bottom line, according to Gary Wigginton, La Porte plant manager, who said that since 1990, the DuPont plant has saved more than \$10 million a year because of pollution prevention programs.

Paul Tebo, a vice president in DuPont's Wilmington, Del., headquarters, said that the Nustar team captured the true "Spirit of the Zero" by eliminating major sources of waste in a way that created outstanding business benefits. "They are role models for our employees," he said, "as we continue to integrate environmental excellence with business success."